

EDNA PRATICO, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF TRENTON, MERCER :
 COUNTY, :
 :
 RESPONDENT. :
 :
 _____ :

SYNOPSIS

Petitioning Vice Principal contended the Board refused to allow her to use accumulated sick days during sick leave due to a work-related injury. The issue herein was whether petitioner may elect to use her accumulated sick leave during the absence in question or whether she must accept temporary disability payments under the Workers' Compensation Act as directed by the Board.

ALJ concluded that since petitioner did not apply for workers' compensation benefits and exhausted her salary benefits pursuant to *N.J.S.A. 18A:30-2.1*, petitioner should have been allowed to exercise her discretion in using her accumulated sick leave to compensate for her absence while she recovered from surgery. ALJ ordered the award of \$9,246 to petitioner for sick leave benefits she was denied and ordered the return of any workers' compensation benefits she received.

Commissioner granted summary decision to petitioner and directed the Board to pay petitioner the \$9,246 owed. In the absence of bad faith, no pre-judgment interest was awarded.

AUGUST 6, 1997

OAL DKT. NO. EDU 2724-96
AGENCY DKT. NO. 91-3/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions and the reply thereto were timely filed pursuant to *N.J.A.C. 1:1-18.4*.*

The Board's exception arguments challenge the legal basis on which the Administrative Law Judge (ALJ) supported his determination that petitioner's motion for summary decision should be granted in the instant matter. The Board contends that the ALJ ignored the Appellate Division's holding in *McIntosh v. De Filippo*, 282 *N.J. Super.* 171, 176 (1995) as to the exclusivity of remedies provided by the Worker's Compensation Act. (Board's Exceptions at p. 3) The Board maintains that "****since Petitioner's leave of absence is due to a work-related injury, all aspects of her compensation, permanent disability, and temporary

* It is noted that the Board also submitted a "response to the 'apparent' Cross-Exceptions filed on behalf of the Petitioner****." (Board's Submission of July 24, 1997)

disability, should be regulated by the standards set forth by the Legislature covering workers' compensation matters." (*Id.*)

The Board further asserts that the within matter concerns the interrelationship between *N.J.S.A. 18A* and *N.J.S.A. 34*. It posits that *McIntosh, supra*, and *Sharon Tompkins v. Hamilton Twp. Bd. of Ed.*, 11 *N.J.A.R.* 520 (1989)

require [that] the application of *N.J.S.A. 18A* in a work-related injury matter must defer to the requirements of *N.J.S.A. Title 34*. Therefore, since *N.J.S.A. 34:15-12(a)* provides lesser monetary benefits in the form of temporary total disability payments than use of sick leave provided by *N.J.S.A. 18A:30-1 et seq.*, [the] Legislature has limited the Petitioner's benefits. (*Id.* at p. 5)

Lastly, the Board distinguishes *Brockman, supra*, from the instant matter. In *Brockman*, the Board recites,

***the teacher was unable to work and the Board's application for involuntary disability retirement was rejected by the Division of Pensions. The Commissioner, as well as the ALJ, felt that in that circumstance, she would not be receiving any form of compensation when her employer *** denied her use of her accumulated sick leave. Thus, it was ruled that a teacher who is sick (nonwork-related illness) and unable to work is entitled to use her sick leave. Clearly, in that situation, there is a real pressure on a teaching staff member to return to work because there is no source of income whatsoever. In the within matter, Petitioner does have a source of income, workers' compensation temporary disability benefits.
(*Id.* at pp. 5, 6)

In reply, petitioner contends that the Board's position that she is barred from exercising her sick leave because she received benefits pursuant to *N.J.S.A. 18A:30-2.1* is not supported by statute. Petitioner asserts that *N.J.S.A. 18A:30-2.1* provides an additional benefit for employees who have suffered work-related injuries over and above the sick leave provisions provided by the same section of the statute. (Petitioner's Reply at p. 1) Moreover, petitioner reasons that, once the maximum benefit of salary for up to one year is exhausted, it is logical that

the employee would resort to drawing from her sick leave bank, which constitutes an earned benefit. (*Id.* at pp. 1, 2)

Petitioner does object, however, to the ALJ's failure to award pre-judgment interest in this matter. Petitioner contends "****there is no basis in law or fact for the Respondent to have taken the position it did in this case." (*Id.* at p. 2)

Upon careful and independent review of the record in this matter, the Commissioner affirms the ALJ's conclusion, for the reasons set forth herein. The Commissioner rejects the Board's view that *McIntosh, supra*, compels petitioner to seek compensation during the course of her absence from the provisions of the Workers Compensation Act. In *McIntosh*, the plaintiff was a member of the Old Tappan Volunteer Ambulance Corps and defendant De Filippo was the police officer providing dispatching services to Old Tappan. When the plaintiff arrived on an emergency scene to which she was dispatched by De Filippo, she was attacked and bitten by a dog. Plaintiff claimed that De Filippo failed to mention that there were vicious dogs on the premises. The question before the court was whether plaintiff and defendant De Filippo were co-employees at the time of the incident, so as to bar plaintiff's claim by the fellow-employee tort immunity provision of the Worker's Compensation Act. *McIntosh, supra*, at 174-177. The *McIntosh* Court highlighted *N.J.S.A. 34:15-8*, the provision of the Act which establishes that its remedies are exclusive. The Act provides:

Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this article and an acceptance of all the provisions of this article, and shall bind the employee.... *McIntosh, supra*, at 176, citing the Workers' Compensation Act, *N.J.S.A. 34:15-8*.

The Court further specified that the Act provides “immunity from suits brought by a co-employee arising from injuries at work.” (*Id.*) However, as mandated by *N.J.S.A.* 34:15-8, the statute stipulates that “[i]f an employee experiences a compensable accident, he may not maintain a common law tort action against a fellow employee arising out of the same incident.” (*Id.*) Thus, the exclusivity of remedies to which the *McIntosh* Court referred pertains to instances where a claimant who suffers a work-related injury elects to be satisfied by the Workers Compensation Act, and, in so doing, forecloses the possibility of other remedies which may be available.

In the instant matter, petitioner did not apply for benefits under the Workers Compensation Act, and, apparently, exhausted her salary benefits pursuant to *N.J.S.A.* 18A:30-2.1. Having exhausted those benefits, the Board maintains that, during her subsequent work-related injury leave, she was not entitled to use her sick leave, but was only entitled to disability payments pursuant to the Workers Compensation Act. (Board’s Exceptions at p. 5) The Commissioner finds no support in the relevant statutory scheme for this position.

Sick leave is defined, in pertinent part, as “****the absence from his or her post of duty, of any person because of personal disability due to illness or injury ***.” *N.J.S.A.* 18A:30-1. Notably, the statute does *not* qualify or limit the nature of the illness or injury.

Further, the Commissioner recognizes that “[t]he purpose of *N.J.S.A.* 18A:30-2 is to guarantee that a school district employee, who is absent from work due to an injury arising out of and in the course of employment, will receive his or her full salary for periods of absence up to one calendar year without losing annual or accumulated sick leave. This statute is meant to ‘complement workers’ compensation benefits for a strictly limited time period.’” *Mona J. Outland v. Monmouth-Ocean Education Service Commission*, 295 *N.J. Super.* 390, 395, citing *Theodore v. Dover Bd. of Ed.*, 183 *N.J. Super.* 407, 416 (App. Div. 1982). However, the

time limitation imposed by the Legislature may well be interpreted as a limit *not* on the employee's entitlement to receive her full salary, but on her entitlement to receive her full salary without having to draw from her annual or accumulated sick leave.

Inasmuch as petitioner rightfully accumulated sick days pursuant to Article XVI of the Agreement signed by the Board and the Trenton Administrators and Supervisors Association, and acquired a sufficient number of same to cover her absence, the Commissioner finds no basis on which to restrict the application of that sick leave because petitioner's injury was caused by an accident arising out of and in the course of employment.

Accordingly, the Commissioner affirms that petitioner must be granted summary decision in the instant matter. Like the ALJ, the Commissioner declines, however, to award petitioner pre-judgment interest, as there has been no showing of bad faith or deliberate violation of law on the part of the Board, as required by *N.J.A.C. 6:24-1.16*. The Board is hereby directed to pay petitioner \$9,246, representing the amount of sick leave benefits which she was denied.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 6, 1997